IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.58 OF 2006

Shri Dinesh R Navalakhi, .. Petitioner.
Vs
1. Corporation Bank and anr. .. Respondents.

Mr R.C.Dhuru,for the petitioner.
Mr R.Y.Mirza, APP for the respondents.
Mr D.P.Desai, for respondent no.1.

CORAM : D.B.BHOSALE, J.
DATED : 27th July, 2006

P.C.:

1. Heard the learned counsel for the parties.

2. The petitioner has impugned the order dated 19.11.2005, by which the application filed by the respondent-Bank under section 311 of Cr P C has been allowed. By that application, the petitioner had prayed for issuance of witness summons to the Advocate Mr M.M.Bagadia who is representing the accused before the trial Court. The complainant desires to examine the Advocate only to prove the consent terms dated 29.11.2001 filed in O.A.No.289 of 2001 before the Debts Recovery Tribunal No.II, Mumbai. The consent terms, according to the complainant, were signed by the parties and their respective advocates including the advocate for the accused. According to the complainant, the accused denies his signature on the said consent terms, which was identified by his advocate. After perusal of the application and the order passed thereon and the other documents placed on

record, I am satisfied that the examination of the advocate for the accused may not be necessary at this stage since the complainant can examine, if he so desires, his advocate to prove the signatures on the consent terms of all the parties which were filed before the tribunal. The learned counsel for the petitioner readily agreed for this course to be adopted and prayed for liberty to file such an application before the trial Court. Ms Dhuru, learned counsel for the petitioner, has no objection for granting such liberty and even allowing the petitioner to file such an application before the trial Court. In the circumstances, I pass the following order.

(a) The impugned order dated 19.11.2005 is quashed and set aside insofar as the examination of M.M.Bagadia, Advocate is concerned.

(b) It is open for the petitioner to make an appropriate application before the trial Court seeking permission of the Court to examine his own advocate, who also had signed the consent terms and in whose presence the consent terms were tendered before the Tribunal. If such an application is filed same may be allowed by the learned Magistrate. The writ petition is accordingly disposed of in the above terms.

(D.B.BHOSALE,J.)